

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY, LLC,	:
Plaintiff	:
	:
v.	: Case No. 04-325 Erie
	:
VICTORY ENERGY OPERATIONS, LLC,	:
Defendant	:

Deposition of STEVEN P. BERNATOWICZ, taken  
before and by Sondra A. Black, Notary Public in  
and for the Commonwealth of Pennsylvania, on Monday,  
November 8, 2005, commencing at 3:17 p.m., at the  
offices of Marshall Dennehey Warner Coleman & Goggin,  
1001 State Street, Erie, Pennsylvania 16501.

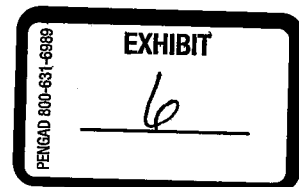
For the Plaintiff:

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For the Defendant:

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225 West Wacker Drive  
Chicago, IL 60606

Reported by Sondra A. Black  
Ferguson & Holdnack Reporting, Inc.



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1 year, 1984.

2 Q. What was your first title at Zurn Energy?

3 A. It was engineer, but I think it was -- I don't know  
4 if there was any specific title, but just engineer.

5 Q. What were your responsibilities as engineer?

6 A. I worked in the stoker department.

7 Q. Stoke?

8 A. Stoker, S-T-O-K-E-R, department. At that time the  
9 company had a coal-burning and wood-burning system, and I  
10 worked on the two-drum units. So both design of the stoker  
11 equipment, which is the burning equipment, and the -- I did a  
12 lot of travelling, troubleshooting in the fields, travelling  
13 to work on the boilers.

14 Q. How long did you hold that position?

15 A. Five years.

16 Q. Till about 1989?

17 A. Yeah. 1989, right.

18 Q. What position did you take in '89?

19 A. Well, then I left the company and went to Riley  
20 Stoker in Wooster, Mass, and I worked there for a year and a  
21 half.

22 Q. What was your position at Riley Stoker?

23 A. I was a process engineer there. We designed the  
24 two-drum units, wood-fired mostly.

25 Q. Now you said you were a process engineer for a year

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1 and a half at Riley Stoker.

2 A. Yes.

3 Q. Did you take another job at Riley Stoker at after  
4 that?

5 A. Yes.

6 Q. What did you do?

7 A. I came back to Zurn in 1990. December '90. My  
8 start date was maybe January '91. And in the same position,  
9 process engineer.

10 Q. You wanted to get back in time for the winter?

11 A. Yeah.

12 Q. Were your responsibilities as process engineer at  
13 Zurn Energy any different than they were before you left  
14 Zurn?

15 A. Yeah. Now I started working in the package systems,  
16 and had full responsibility for the design of a complete  
17 boiler. At Riley we were only doing portions of each unit,  
18 you know, maybe an economizer section or an evaporator  
19 section. But now, at Zurn, I was doing a full package unit  
20 design.

21 Q. What type of package boilers were you working on in  
22 1990, 1991 when you became a process engineer?

23 A. They were the Keystone package boiler.

24 Q. Was that your first opportunity to work on the  
25 Keystone package boilers?

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1 A. Yes.

2 Q. What size boiler typically were you working on at  
3 that time?

4 A. They really vary quite a bit. I would say that most  
5 of them were in the range of 100,000 pounds of steam per hour  
6 to 250,000 pounds of steam per hour. The 250 pound-per-hour  
7 unit particularly was very popular. We sold a lot of those  
8 units at that time. In fact, they got to be almost a  
9 standard -- we never, fortunately, sell anything standard,  
10 but they were almost a standard product. They had the same  
11 pressure and temperature. So it was -- made it a little bit  
12 easier to do the work, and did a lot of it.

13 Q. You just said you never sell anything standard.  
14 What do you mean by that?

15 A. They're always designed per the customer  
16 specifications. So we never have a product you can just pull  
17 off the shelf. They're always a custom design.

18 Q. In your experience, is that typical in the package  
19 boiler industry?

20 A. Yes.

21 MR. GISLESON: Objection.

22 A. I think it's typical in the entire industry.

23 Q. What sort of customer specifications would you have  
24 to meet in order to, you know, design the boiler?

25 MR. GISLESON: Objection.

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1 A. Everything they would ask. It would include fuel  
2 type, we would have to meet the steam conditions that they  
3 asked for, meet any guarantees the company would have sold at  
4 the time, or any velocity requirements, pressure  
5 requirements -- whatever the customer had. Sometimes the  
6 specs were very large, and sometimes they were a sheet of  
7 paper.

8 Q. I don't want to go off on detours, but I have to  
9 know, what are philosophy requirements?

10 A. I didn't --

11 Q. Did you say philosophy requirements?

12 A. No.

13 MR. GISLESON: Velocity.

14 A. Velocity.

15 Q. Velocity. Okay.

16 A. Gas and steam.

17 Q. Not nearly as exciting.

18 A. Sorry.

19 Q. Now, at that time, in 1990, 1991, when you started  
20 working on the Keystone package boiler line, were those M  
21 series boilers?

22 A. No.

23 Q. What type of boilers were they?

24 A. They were O style Keystone boilers, but they were  
25 not the M style design. As I said, the M style was outdated

4 (Pages 10 to 13)

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1 before a contract was sold, if you know, or after?  
 2 A. Yes. It was always before the contract was sold.  
 3 It was in the proposal stage.  
 4 Q. So essentially what you were doing, to paraphrase,  
 5 was you would help Victory Energy put their proposal  
 6 together?  
 7 A. That's correct, yes.  
 8 Q. And you understood that the material that you were  
 9 sending to Victory Energy was going to be included in the  
 10 proposal to the customer, correct?  
 11 A. They just asked me for the information. What they  
 12 did with it -- you can assume that, but I don't know what  
 13 they did with it.  
 14 Q. Was the information that you provided to Victory  
 15 information that you, as a proposal designer, would typically  
 16 send to a customer?  
 17 A. Yes. It's the same information that we send out to  
 18 a customer.  
 19 Q. Have you had any conversations with anyone in the  
 20 last year and a half regarding the status of the license  
 21 agreement between Victory Energy and Indeck Keystone Energy?  
 22 A. No. I never discussed the license agreement with  
 23 anyone.  
 24 Q. Have you ever had an opportunity to review any of  
 25 the sales literature for Indeck Keystone Energy?

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1 A. I don't recall any sales literature.  
 2 Q. Now, CMI EPTI shares office space with IKE, correct?  
 3 A. That's correct.  
 4 Q. But you just haven't seen any sales material or  
 5 anything like that laying around the office?  
 6 A. Not really, no.  
 7 MR. GISLESON: Please make sure you keep your voice  
 8 up. Sometimes you have a tendency to drift and  
 9 it's difficult for the court reporter.  
 10 THE WITNESS: Okay. Sorry.  
 11 Q. Do you know whether or not Indeck Keystone Energy  
 12 has sold or marketed any Keystone boilers?  
 13 A. Keystone Energy? You mean Indeck?  
 14 Q. Yes, sir.  
 15 A. I believe Indeck has marketed some boilers, but --  
 16 Q. Do you know if they've made any sales of those  
 17 boilers?  
 18 A. No, they haven't. That I know of.  
 19 Q. Have you had any discussions with anyone at Indeck  
 20 Keystone Energy regarding Victory Energy?  
 21 A. Not recently, no. I worked with people from  
 22 Indeck -- when they were with our company, I'm sure that we  
 23 talked about items with -- about Victory. I don't remember  
 24 any specifics.  
 25 Q. But since you went to CMI EPTI, that's what I'm

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1 interested in, have you had any conversations with IKE  
 2 employees?  
 3 A. I don't recall any conversations about Victory.  
 4 Pretty much everybody is close-lipped.  
 5 Q. Have you become aware of any conversations between  
 6 IKE employees and third parties relating in any way to  
 7 Victory Energy?  
 8 A. No.  
 9 Q. Do you recall a conversation you had with Dave  
 10 Briggs in January of 2003 relative to the first boiler sold  
 11 by Victory Energy?  
 12 A. I believe it was a similar boiler to one we had sold  
 13 in the past, if that's the same one or not, I'm not 100  
 14 percent sure, but, yeah, maybe we talked about maybe where  
 15 drawings were for it, that type of thing. I know that -- I  
 16 believe that's the one that was similar to a boiler that Zurn  
 17 had sold or maybe Aalborg had sold in the past.  
 18 Q. Is that the Heinz boiler?  
 19 A. I don't know.  
 20 Q. Can you recall anything else from that conversation  
 21 with Dave Briggs?  
 22 A. It was so long ago I really don't remember anything  
 23 specific.  
 24 Q. Mr. Bernatowicz, you've been handed what we've  
 25 marked as Bernatowicz Exhibit 1, which, for the record, is a

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1 subpoena in a civil case to Steve Bernatowicz at CMI IPTI  
 2 (sic), interesting. Do you recall receiving that subpoena?  
 3 (Bernatowicz Deposition Exhibit No. 1 marked for  
 4 identification.)  
 5 A. Yes, I do.  
 6 Q. Have you appeared here today in order to satisfy  
 7 your obligations under that subpoena?  
 8 A. Yes, I did.  
 9 Q. Mr. Bernatowicz, you've been handed what we've  
 10 marked as Bernatowicz Exhibit 2, which is Bates labeled  
 11 IKE006257, 6258 in the bottom right-hand corner, and it is,  
 12 for the record, from Jere Nieminski to Mark White with carbon  
 13 copies to Ted Fuhrman and Steve Bernatowicz, dated February  
 14 5, 2003. Do you see that?  
 15 (Bernatowicz Deposition Exhibit No. 2 marked for  
 16 identification.)  
 17 A. Yes, I do.  
 18 Q. Do you recall receiving this e-mail in or around  
 19 February 2003?  
 20 A. I must have, but I don't remember it, no.  
 21 Q. Do you see, down under memo, in the body of the  
 22 e-mail it says, "The proposed boiler would be a 15M Keystone  
 23 with welded wall front, side, and rear construction and an  
 24 extended furnace length."  
 25 A. Yes.

8 (Pages 26 to 29)

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1 furnace wall assembly, and welded front wall assembly. Do  
2 you see that?

3 A. Yes, I do.

4 Q. To the best of your knowledge, did anyone object to  
5 Dave Briggs forwarding to Victory Energy drawings --

6 A. I don't know of anyone objecting. Sorry to  
7 interrupt.

8 Q. Do you recall receiving this e-mail?

9 A. I don't recall it, but I did. I wouldn't have  
10 gotten involved in anything that were drawings going to a  
11 customer. I mean, I may have looked at it, but what they  
12 sent them wasn't my responsibility or my -- part of my work  
13 description.

14 Q. We've handed you what's been marked Bernatowicz  
15 Exhibit 5, which is marked V00105 and 106, and it is a series  
16 of e-mails, the most recent being Monday, December 22, 2003,  
17 from Steve Bernatowicz to Mark White, and it's in response to  
18 an e-mail from Mark White to Bob Gdaniec and yourself dated  
19 December 19, 2003. Do you see that?

20 (Bernatowicz Deposition Exhibit No. 5 marked for  
21 identification.)

22 A. Yes, I do.

23 Q. And it relates to the Dallas-Fort Worth Airport  
24 project?

25 A. Yes.

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1 Q. And in note No. 2, which is highlighted, it says,  
2 "Note that all of the surface shown above would need to be  
3 adjusted for a membrane wall furnace and/or a membrane outer  
4 wall." Do you see that?

5 A. Yes, I do.

6 Q. And that relates to the circulation study that you  
7 did?

8 A. I believe it could. It appears that maybe they  
9 didn't take the proper surface, because on the welded  
10 membrane, there would be less surface because there's less  
11 tubes.

12 Q. Did you understand at this time that the Dallas-Fort  
13 Worth Airport boiler project included membrane wall furnace  
14 and membrane outer wall?

15 A. Yes.

16 Q. Did Bob Gdaniec ever tell you that you should stop  
17 working on the Dallas-Forth Worth Airport project because it  
18 included membrane wall furnace and/or membrane outer wall?

19 A. No. I'm sure Bob asked me to do the work on it.

20 Q. You completed the circulation study for the  
21 Dallas-Fort Worth project?

22 A. Yes, I did.

23 Q. Mr. Bernatowicz, you've been handed Bernatowicz  
24 Exhibit 6, which, for the record, is a string of e-mails  
25 Bates stamped IKE006415, 6416. And the first e-mail is from

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1 John Viskup to you, it says -- and that's on the second page.  
2 By first, I mean oldest.

3 A. Yes, I follow you.

4 Q. Sorry about that. "Steve, Can you please re-run the  
5 attached performance by adding an additional 3 feet to the  
6 weld line to weld line dimension. We are up against Rentech  
7 on this project and need to lower our heat release rate as  
8 much as possible and still be able to ship a package boiler.  
9 We notice that the superheater outlet extends past the boiler  
10 taking up valuable space on the rail car that we could use to  
11 increase the boiler length." Do you see that?

12 A. Yes.

13 Q. Did you get approval from anyone at Erie Power to  
14 assist Victory Energy in this project?

15 A. I believe I -- I would have had someone tell me that  
16 this is what they'd like me to work on, yes.

17 Q. You understood that you were authorized to work on  
18 this for Victory Energy as part of the license agreement?

19 MR. GISLESON: Objection. Foundation.

20 A. Authorized by?

21 Q. By Erie Power.

22 A. Yes.

23 Q. Would adding an additional 3 feet to the weld line  
24 to weld line dimension take a boiler out of the standard M  
25 series design?

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1 A. It could. I don't know what the overall length of  
2 this one is.

3 Q. Well, if you keep reading, you write back, "John,  
4 Attached is the performance for the 80M Peoria with 3 foot  
5 added to the weld line to weld line dimension as you  
6 requested."

7 A. Yes.

8 Q. "The new weld line dimension is 47 feet, 3 inches.  
9 Please note that this dimension exceeds the maximum rail  
10 shipped overall length of 46, 8 based on a weld line to weld  
11 line using a depressed rail car." Do you see that?

12 A. Yes.

13 Q. Would that take it outside the standard M series?

14 A. Yes, it would.

15 Q. And this was in August of 2004, correct?

16 A. That's what this says.

17 Q. Is that correct?

18 A. That's correct.

19 Q. Do you have any reason to doubt that these e-mails  
20 were sent back and forth between you and Mr. Viskup in August  
21 of 2004?

22 A. No, I don't.

23 Q. And you got another e-mail from Mr. Viskup saying,  
24 "What are the new heating surfaces associated with the new  
25 boiler, furnace convected, et cetera?". And you write back,

10 (Pages 34 to 37)

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1 MR. SHEEAN: Objection. Language of foundation.

2 Q. You can answer.

3 A. It was developed when we were doing all tangent tube  
4 designs, and it was never updated to provide surface for  
5 membrane wall. So it was just outdated.

6 Q. Did you ever provide a copy of the Keystone design  
7 manual to anyone at VEO?

8 A. No, I did not.

9 Q. Did Mark White ever tell you that he hoped at some  
10 point to go to work for VEO?

11 A. No. I found out when he was already announcing he  
12 was leaving.

13 Q. Did Mark White give you any instructions about what  
14 you're to do if VEO calls you on the phone with design  
15 questions?

16 A. Yes. He told me that I would be doing designs with  
17 them, yes.

18 Q. And all of the design work that you did was in  
19 conjunction with proposals; is that right?

20 A. With the exception of the Dallas-Forth Worth where I  
21 did a circulation study. I understand that was a contract  
22 design. From what I remember, it was all proposal design  
23 work, and I didn't really do any sizing of the equipment when  
24 it was in the contract phase. I may have done some review of  
25 what was designed, but I don't believe I did any design for

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1 contract work.

2 Q. When you're talking proposal design work, what does  
3 that involve?

4 A. It's the design before the boiler has been sold. So  
5 it's sizing of the boiler, providing all the information that  
6 the customer may require, if we provided a specification, so  
7 we could tell them that we met whatever the specification  
8 was.

9 Q. Does that include any detailed designs in terms of  
10 the specific features or characteristics of the boiler?

11 A. It would say the surface area, probably drum sizes,  
12 tube sizes. So, yes, it has specific details in it, yes.

13 Q. Are you actually preparing drawings, though, of the  
14 boiler?

15 A. Typically I would provide sketches depending on if  
16 it was a firm or budget proposal. I mean, a firm would be it  
17 was more likely to become a job. We might be able to provide  
18 more information than would be sometimes -- a proposal  
19 design, I don't remember if we did any at the time, I don't  
20 know. But -- I wouldn't have done them, but our graphics  
21 screwed me up and provided some drawings.

22 Q. You didn't provide the drawings, did you?

23 A. No.

24 MR. GISLESON: Those are all the questions.

25

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1 REDIRECT EXAMINATION

2 BY MR. SHEEAN:

3  
4 Q. Just a couple quick follow-up questions.

5 Mr. Bernatowicz, you testified before that nothing  
6 that Erie Power Technologies sold was standard or stocked,  
7 that everything had to be somewhat customized to fit customer  
8 needs, correct?

9 A. That's correct.

10 Q. Could M series boilers be sold without customizing  
11 to fit customer needs?

12 MR. GISLESON: Objection. Foundation.

13 A. They could be sold that way. It'd be unlikely that  
14 any customer would buy one because the surface would be so  
15 over -- it would be so large that the expense would be too  
16 great, I would guess. It's possible that someone would want  
17 one.

18 Q. Why would the expense be so great?

19 A. You have so much additional surface in one of those.  
20 An M series, as we talked about before, was developed before  
21 economizers. So typically it was a lot of boiler surface  
22 trying to get the gas temp down to a reasonable number.

23 Q. Did Victory Energy sell any Keystone boilers during  
24 the time of the license agreement with Erie Power that  
25 included economizers?

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1 A. I'm not aware of any of the boilers they sold, with  
2 the exception of Dallas, I guess. They had some that were  
3 getting pretty close, and they probably all had economizers,  
4 I would say.

5 Q. Anyone object to the inclusion of an economizer with  
6 the boilers that Victory sold that you know of?

7 A. No. I'm sure we would recommend it, and I'm sure  
8 every customer out there would want one also.

9 Q. Why would Erie Power recommend that Victory Energy  
10 include an economizer?

11 MR. GISLESON: Objection. It's hypothetical, no  
12 foundation.

13 A. If we're helping with the design, we would recommend  
14 the best design possible for a boiler.

15 Q. Why would you recommend the best design possible for  
16 a boiler?

17 A. Because we're trying to provide a quality product.  
18 It's something that we would -- we've always tried to provide  
19 the best product we could. That's part of the design  
20 engineering. We'd probably try to provide what we could that  
21 would be the best model, something that the customer would  
22 want, something that would be efficient so it wouldn't waste  
23 money on fuel.

24 Q. Generally speaking, would an M series -- strike  
25 that. Generally speaking, would a standard M series boiler

15 (Pages 54 to 57)

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INDECK KEYSTONE ENERGY, LLC, :  
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Defendant :

Deposition of THEODORE CHARLES FUHRMAN, JR.,  
taken before and by Sondra A. Black, Notary Public  
in and for the Commonwealth of Pennsylvania, on Monday,  
November 7, 2005, commencing at 2:09 p.m., at the offices  
of Marshall Dennehey Warner Coleman & Goggin, 1001 State  
Street, Erie, Pennsylvania 16501.

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Reported by Sondra A. Black  
Ferguson & Holdnack Reporting, Inc.

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I N D E X

THEODORE CHARLES FUHRMAN, JR.

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THEODORE CHARLES FUHRMAN, JR.,  
first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHEEAN:

Q. Sir, could you please state your full name for the record.

A. Theodore Charles Fuhrman, Jr.

Q. Let the record reflect that this is the deposition taken of Theodore Charles Fuhrman, Jr., taken pursuant to subpoena and notice and pursuant to the Federal Rules of Civil Procedure.

Mr. Fuhrman, have you ever had your deposition taken before?

A. Yes.

Q. How many times?

A. 12 to 15.

Q. Well, you know the drill pretty well then so I won't belabor the point too much. But just so that I say it for the record, my name is Christopher Sheean. I represent Victory Energy Operations, LLC in a lawsuit that was filed by Indeck Keystone Energy here in Erie, Pennsylvania. I'm going to be asking you a series of questions, and my questions will be verbal and out loud, and I need you to answer the same

PENGAD 800-631-6989

EXHIBIT

7

1 signed.  
 2 A. No, I do not.  
 3 Q. Beginning of 2003, to the best of your recollection?  
 4 A. I don't recall.  
 5 Q. What was being said with regard to the license  
 6 agreement between Victory Energy and Erie Power when you  
 7 first heard about it?  
 8 A. That it was an agreement where Victory Energy was  
 9 given the license to market and build M series boilers.  
 10 Q. Were the people at Erie Power excited about the  
 11 license agreement with Victory Energy?  
 12 MR. GISLESON: Objection. Vague, foundation.  
 13 Q. You can answer.  
 14 A. No.  
 15 Q. Specifically, to the best of your recollection, who  
 16 was unhappy about the license agreement when you first heard  
 17 about it?  
 18 A. Most everyone in the organization.  
 19 Q. To the best of your recollection, why was most  
 20 everyone in the organization unhappy about the license  
 21 agreement with Victory Energy?  
 22 MR. GISLESON: Objection. Vague, no foundation.  
 23 Q. You can answer.  
 24 A. They're unhappy because the M series had always been  
 25 a mainstay for our company, and the management at that time

33

1 various companies within the United States. We also had -- I  
 2 don't know if those were M series or not. I don't think  
 3 Korea built an M series. They built the O style boilers for  
 4 us.  
 5 Q. What size capacity range O style boilers were built  
 6 in Korea?  
 7 A. 150 to 250,000 pounds an hour.  
 8 Q. Can you recall any specific individuals within Erie  
 9 Power who were unhappy about management's decision to license  
 10 the Keystone boilers to Victory Energy?  
 11 A. Myself.  
 12 Q. Anyone else?  
 13 A. Dave Briggs.  
 14 Q. Anyone else?  
 15 A. Bob Gdaniec. Like I said, a lot of people were  
 16 disappointed.  
 17 Q. Now, earlier today you testified, I believe, that  
 18 you told Mr. Gisleson you were not involved in the  
 19 negotiations for the license agreement itself; is that  
 20 correct?  
 21 A. Correct.  
 22 Q. You were involved in negotiating one appendix,  
 23 correct?  
 24 A. Correct.  
 25 Q. That was the appendix dealing with who was

35

1 didn't -- didn't have time for that -- that product line.  
 2 They spent most of their time going after the HRSG market.  
 3 And in the past, when we had one type of boiler sales go  
 4 down, the M series boiler always seemed to level things out  
 5 as far as income to the company. And we thought it was a  
 6 mistake to sell that -- or license that away to somebody.  
 7 Q. Where were the M series boilers manufactured when  
 8 Zurn Energy was manufacturing them?  
 9 A. In our shops in Erie.  
 10 Q. Did that change at some point?  
 11 A. They closed down our shops.  
 12 Q. What year were those shops closed down?  
 13 A. I don't recall offhand.  
 14 Q. Was it before 2000?  
 15 A. Yes.  
 16 Q. Where were Zurn Energy boilers being manufactured  
 17 after the Erie shops were closed down?  
 18 A. Depended on the type of boiler.  
 19 Q. Where were M series boilers being manufactured after  
 20 the shops closed down in Erie?  
 21 A. Depended on where they were going to be shipped to.  
 22 Q. What were the options available in terms of where  
 23 the M series boilers could be manufactured for Zurn Energy  
 24 after the shops were closed down in Erie?  
 25 A. North American units were built in various -- by

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1 authorized on behalf of the company after Mr. White left?  
 2 A. Correct.  
 3 Q. Are you aware of who was authorized to negotiate and  
 4 exercise the license agreement for Erie Power?  
 5 A. No.  
 6 Q. Were you ever aware of who it was?  
 7 A. I knew that it was -- that Mark White did the  
 8 negotiations. I'm not aware of his being authorized to.  
 9 Q. Did you believe that he was not authorized to  
 10 negotiate the license agreement?  
 11 A. I don't know.  
 12 Q. Did you ever raise that with anyone in management at  
 13 Erie Power?  
 14 A. Not that I recall.  
 15 Q. Do you know if anyone at Erie Power ever raised with  
 16 management a question as to whether or not Mark White was  
 17 authorized to negotiate the license agreement with Victory  
 18 Energy?  
 19 A. I don't know.  
 20 Q. Are you aware of who executed the license agreement  
 21 on behalf of Erie Power?  
 22 A. Mark White.  
 23 Q. Now, you said before that -- strike that. I'll just  
 24 ask you a new question. What was your understanding of what  
 25 was licensed to Victory Energy under the license agreement

36

1 with Erie Power?

2 A. They licensed the M series boiler.

3 Q. How did you come to that understanding?

4 A. Looking at the license agreement.

5 Q. Anything else?

6 A. No.

7 Q. Are you an attorney, sir?

8 A. No.

9 Q. Did you ever ask Mark White what was licensed under  
10 the license agreement?

11 A. We had discussions.

12 Q. When was your first discussion with Mark White  
13 regarding what was licensed under the license agreement?

14 A. After I was made head of the license agreement.  
15 Right before Mark left.

16 Q. To the best of your recollection, what did Mr. White  
17 say in response to your inquiry?

18 A. They license solely the M series boilers.

19 Q. Was anyone else present when he told you that?

20 A. I don't recall.

21 Q. How did you ask Mr. White what was licensed? I  
22 mean, how did you phrase the question to the best of your  
23 recollection?

24 A. I asked him what was -- we went in and sat down and  
25 discussed the license agreement and went over the different

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1 appendices so that I would know what exactly Victory was to  
2 market and to build. And I -- in that was all the documents  
3 that -- relative to the M series that he had put together.

4 Q. And this is just before Mr. White left, correct?

5 A. Yes.

6 Q. Had you been involved in the design or rating of any  
7 of the Keystone boilers prior to Mr. White's departure?

8 A. The rating or design?

9 Q. Yes, sir.

10 A. No.

11 Q. Did you become aware of any of the design  
12 characteristics of any of the Keystone boilers that were  
13 rated and designed for Victory Energy prior to Mr. White's  
14 departure?

15 A. There was a project that we did the engineering on  
16 for Victory Energy.

17 Q. Do you recall the name of that project?

18 A. No.

19 Q. Does Atofina ring a bell?

20 A. No.

21 Q. How about Iowa Ethanol?

22 A. Those -- those jobs were afterwards. I don't recall  
23 the first job that we worked on. That's the one I was  
24 talking about.

25 MR. GISLESON: We've been going for more than an

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2 MR. SHEEAN: That's fine.

3 (Pause in the proceedings.)

4 Q. Mr. Fuhrman, we were talking a little bit before  
5 about your discussions with Mr. White with respect to the  
6 scope of the products included under the license agreement.  
7 Do you recall that?

8 A. Yes.

9 Q. Did either you or he say anything more than the fact  
10 that M series boilers were licensed under the license  
11 agreement? I mean, was there any elaboration as to what that  
12 would include?

13 A. Elaboration was strictly up -- from a 3M up to a 21M  
14 I believe it was.

15 Q. Now, you'd been involved in designing M series  
16 boilers prior to the Victory Energy license agreement,  
17 correct?

18 A. Yes.

19 Q. Were those boilers that were involved in  
20 designing -- was there any requirement by you, as the  
21 engineer, to make changes in the design to accommodate  
22 customer needs?

23 A. We would go and utilize possibly a different size  
24 boiler due to having to utilize a superheater or different  
25 fuels being fired. But we always just kept up or down

39

1 depending upon what we needed.

2 Q. During the time that you were rating and designing  
3 these M series boilers, would you typically receive an  
4 invitation for bid or a specification from a customer?

5 A. Yes.

6 Q. During that time, when you were rating and designing  
7 boilers for Zurn or Aalborg or one of the predecessors of  
8 Erie Power, did you ever receive a specification or  
9 invitation to bid that included a requirement that the boiler  
10 have membrane wall technology?

11 A. Yes.

12 Q. Did you ever design an M series boiler with membrane  
13 wall technology?

14 A. Yes.

15 Q. What else did you and Mr. White discuss during that  
16 meeting just before he left Erie Power with respect to the  
17 license agreement?

18 A. The payment schedules, the royalties.

19 Q. Anything else?

20 A. Scheduling.

21 Q. When you say "scheduling," are you referring to  
22 current projects that were in the works for Victory Energy?

23 A. No.

24 Q. What do you mean by "scheduling"?

25 A. Scheduling meaning notification by Victory of a

40

1 A. There was discussions from Jay McConaughy and Mark  
2 White relative to information that was included in the design  
3 manual that the only way that they would be able to know what  
4 page and section the stuff was on is if they had the manual  
5 in front of them.

6 Q. Other than the fact that Victory Energy had a copy  
7 of the design manual, did you have any evidence that Victory  
8 Energy had pirated a copy of the design manual?

9 MR. GISLESON: Objection. Asked and answered. He  
10 said it was a controlled document.

11 Q. Go ahead. You can answer.

12 A. It's a controlled document, and according to what  
13 Mark White advised me in the initial phase of the license  
14 agreement, he stated that he did not go and provide that to  
15 them. So how they got those is subject to conjecture, and  
16 that's why I put "pirated".

17 Q. But you had no other evidence, other than what  
18 you've just testified to, correct?

19 A. Correct.

20 Q. At the top of Page 3 of 9, which is IKE5299, bolded  
21 section says, "VEO continually demands design capability and  
22 exercises EPTI personnel to obtain information so that they  
23 can use the rating program for their nonstandard M series  
24 boiler designs." Do you see that?

25 A. Yes.

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1 Q. And that boiler hadn't shipped yet, correct?

2 A. Correct.

3 Q. Turn to Page 7 of 9, which is IKE5303. The first  
4 full bolded paragraph says, "VEO has taken EPTI's Keystone  
5 sales brochure and modified it for their use." Do you see  
6 that?

7 A. Yes.

8 Q. Do you have any knowledge of whether or not the  
9 Keystone sales brochure that Victory Energy was utilizing had  
10 been approved by Mark White?

11 A. No.

12 Q. On Page 8 of 9, which is IKE5304, the top of the  
13 page, Paragraph S, Clause 19, Arbitration, and the last  
14 sentence in the bold there you say, "Failing this the  
15 agreement should be terminated." Do you see that?

16 A. Yes.

17 Q. So it was your understanding that Erie Power could  
18 seek arbitration or termination of the agreement if it didn't  
19 like what Victory was doing, correct?

20 A. Correct.

21 Q. Erie never did that, correct?

22 A. No.

23 Q. That's not correct?

24 A. No, they did not terminate the agreement.

25 Q. And they never sought to arbitrate, correct?

95

1 Q. Erie Power could have refused Victory Energy's  
2 request, could they not?

3 A. Yep.

4 Q. On Page 4 of 9, which is IKE5300, you identify six  
5 boiler sales to date. Do you see that? Under payment and  
6 accounting?

7 A. Yes.

8 Q. And those six boilers are 20281, 20282, and 20283,  
9 and 2030, 2031, and 2033, and of the five boilers that had  
10 been shipped, your records showed that Victory had made  
11 payment. Do you see that?

12 A. Yes.

13 Q. And on the sixth boiler, it had not shipped yet,  
14 correct?

15 A. Correct.

16 Q. And therefore, there was no payment due at that  
17 time, correct?

18 A. No.

19 Q. That's not correct?

20 A. No.

21 Q. What's not correct about that?

22 A. They were supposed to pay us an initial fee, and  
23 then a final fee of 40 percent -- wait a minute. I may have  
24 got that wrong. Yes. The final 40 percent of the royalty  
25 was to be paid upon shipment.

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1 A. Correct.

2 Q. Mr. Fuhrman, I've handed you what we've marked as  
3 Fuhrman Deposition Exhibits 19, 20, 21, and 22. Exhibit 19  
4 is IKE1735, Exhibit 20 is IKE5126, Exhibit 21 is IKE1461, and  
5 Exhibit 22 is IKE1449.

6 (Fuhrman Deposition Exhibit Nos. 19, 20, 21, and 22  
7 marked for identification.)

8 A. Okay.

9 Q. Do you see that?

10 A. Yes.

11 Q. For the record, Exhibit 19 is an April 23, 2004  
12 letter to Mr. Bob Gdaniec from Mark J. White with a carbon  
13 copy to Ted Fuhrman, and that project shows Dallas-Fort Worth  
14 Airport Authority. Do you see that?

15 A. Yes.

16 Q. It shows, "One Keystone Model 15M 100 percent full  
17 membrane watercooled." Do you see that?

18 A. Yes.

19 Q. You understood that was the project with the 60-inch  
20 drum?

21 A. Yes.

22 Q. And here it shows Erie receiving a 4 percent royalty  
23 on that project?

24 A. Yes.

25 Q. Did you, or anyone from Erie Power, object to

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1 Victory Energy proceeding with the sale of the boiler?  
 2 A. No.  
 3 Q. Exhibit 20 is dated April 23, 2004. It's, again, to  
 4 Mr. Bob Gdaniec from Mark White with a carbon to yourself,  
 5 Ted Fuhrman. It says, "Re: License Agreement Unit Sale  
 6 Notification Ware, Incorporated." And the purchaser is Ware,  
 7 Inc., and it's two Keystone Model 15M 100 percent full  
 8 membrane watercooled boilers with a 4 percent royalty of  
 9 \$20,666.64 going to Erie Power. Do you see that?  
 10 A. Yes.  
 11 Q. Did you, or anyone at Erie Power, object to Victory  
 12 Energy proceeding with the sale of those boilers?  
 13 A. I didn't. I don't know if anyone else did.  
 14 Q. Okay. The next document, Exhibit 21, is, again,  
 15 April 23, 2004, "License agreement Unit Sale Notification for  
 16 Protherm for Nestle Purina." It's one Keystone Model 15M 100  
 17 percent full membrane watercooled, and it's, again, showing  
 18 an Erie royalty there, and you're carbon copied on that. Do  
 19 you recall receiving this, by the way, sir?  
 20 A. Yes.  
 21 Q. Did you or anyone at Erie Power object to Victory  
 22 Energy proceeding with the sale of this 15M 100 percent full  
 23 membrane watercooled boiler?  
 24 A. I didn't. I don't know if anyone else did.  
 25 Q. And Exhibit 22 is for the Oxy Vinyl project that we

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1 the drum/boiler design?  
 2 A. That was part of the license agreement.  
 3 Q. So you didn't have a problem with it?  
 4 A. No.  
 5 Q. Do you recall that in August 2004 Victory Energy had  
 6 made a request to send a new engineer up to Erie for  
 7 training?  
 8 A. I don't recall the exact time, but they did that  
 9 several times.  
 10 Q. Did anyone ever come for training?  
 11 A. No.  
 12 Q. Were you opposed to Victory Energy engineers coming  
 13 up for training?  
 14 A. No.  
 15 Q. Let me just go through my notes. Mr. Fuhrman, how  
 16 old are you?  
 17 A. 55.  
 18 Q. Do you like working at CMI EPTI?  
 19 A. Yes.  
 20 Q. Do you plan to continue working there?  
 21 A. Yes.  
 22 Q. Any plans to move out of the Erie area?  
 23 A. No.  
 24 MR. SHEEAN: Those are all the questions I have for  
 25 you right now, sir.

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1 heard about with the different size boiler, correct? Do you  
 2 recall the earlier document I showed you regarding Oxy Vinyl,  
 3 and you indicated that you objected to the whole project  
 4 proceeding?  
 5 A. I thought that was the Dallas-Forth Worth.  
 6 Q. Fair enough. Doesn't matter. With respect to the  
 7 Oxy Vinyl job, do you remember receiving this invoice in or  
 8 around April 23, 2004?  
 9 A. I don't remember receiving it, but --  
 10 Q. Okay. It's for two Keystone 15Ms with superheated  
 11 steam 100 percent full membrane watercooled?  
 12 A. Correct.  
 13 Q. And it has a 7 percent Erie royalty at \$56,098.56?  
 14 A. Yes.  
 15 Q. Did you, or anyone at Erie Power, object to Victory  
 16 Energy proceeding with the sale of those boilers to Oxy  
 17 Vinyl?  
 18 A. I didn't. I don't know if anyone else did.  
 19 Q. Did Erie Power consider the technology for its drum  
 20 internals to be proprietary?  
 21 A. Yes.  
 22 Q. Did you, in particular, consider that to be a  
 23 closely-guarded proprietary asset?  
 24 A. Yes.  
 25 Q. Did you have a problem with Victory Energy utilizing

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1 MR. GISLESON: I just have a few questions.  
 2  
 3 CROSS-EXAMINATION  
 4 BY MR. GISLESON:  
 5  
 6 Q. In Exhibit 17 we looked at an e-mail exchange that  
 7 you had with Bob Gdaniec in which you expressed your view  
 8 that, "EPTI needs to insure that if/when we sell this to VEO  
 9 that we maintain the Keystone trademark." Why was it  
 10 important to you that EPTI maintain ownership over the  
 11 Keystone trademark?  
 12 MR. SHEEAN: Objection. Asked and answered. You  
 13 can answer again.  
 14 A. Because that was a trademark that covered both the M  
 15 series as well as the O style boilers that we went and  
 16 manufactured. And it was the trademark of -- in the industry  
 17 relative to our package boiler line. So it was an asset to  
 18 the company.  
 19 Q. How long had the Keystone trademark been used in the  
 20 industry? Approximately.  
 21 A. Since the early 1950s.  
 22 Q. Was the Keystone name well known, to your knowledge?  
 23 A. Yes.  
 24 Q. How do you know the Keystone name was well known in  
 25 the industry?

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF OKLAHOMA

3   INDECK KEYSTONE ENERGY, LLC,   )  
4   a Delaware limited liability   )  
5   company,                           )  
6                                       )   CIVIL ACTION  
7                   Plaintiff,       )  
8                                       )  
9   vs.                                )  
10                                     )  
11                                     )  
12                                     )  
13   VICTORY ENERGY OPERATIONS, LLC)  
14   a Delaware limited liability   )  
15   company,                           )  
16                                       )  
17                   Defendant.       )  
18                                       )  
19                                       )  
20                                       )  
21                                       )  
22                                       )  
23                                       )  
24                                       )  
25                                       )

DEPOSITION OF JOHN VISKUP,

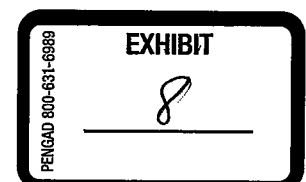
a witness called on behalf of the Plaintiff, on the 31st  
day of January, 2006, at 320 South Boston, Suite 400, in  
the City of Tulsa, County of Tulsa and State of Oklahoma,  
commencing at 9:30 A.M., before the undersigned, Joni  
Humphries, a Certified Shorthand Reporter in and for the  
State of Oklahoma.

Fee for Original: \$ \_\_\_\_\_  
Paid by Plaintiff.

\_\_\_\_\_  
JONI HUMPHRIES, CSR #1236

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5508 South Lewis Avenue  
Tulsa, Oklahoma 74105  
Phone: (918) 745-9959

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- 1 A Since we started the company in 1999.
- 2 Q As of the time that VEO entered the license
- 3 agreement, how many watertube boilers had it sold?
- 4 A I don't know.
- 5 Q Approximately?
- 6 A I'm not sure.
- 7 Q Can you estimate in any way?
- 8 A Several I would say. More than ten.
- 9 Q Who were the manufacturers of those boilers?
- 10 A Superior Boiler Works, ourself and Erie Power.
- 11 Q Any others?
- 12 A Not that I can recall right now.
- 13 Q What was the VEO watertube boiler that had been sold
- 14 prior to the time that VEO entered the license agreement?
- 15 A Heat recovery steam generators.
- 16 Q Were those heat recovery steam generators, or HRSGs,
- 17 ones that had been designed by VEO?
- 18 A Correct.
- 19 Q As of the time that VEO entered the license
- 20 agreement, who at VEO was designing HRSGs?
- 21 A That would be myself, I believe Trent Miller. That's
- 22 about it I guess.
- 23 Q As of the time that the license agreement was
- 24 executed by VEO, how many watertube boilers designed by
- 25 EPTI had it sold?

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1 A Can you restate your question?

2 Q Sure. How many EPTI watertube boilers had VEO sold  
3 as of the time that it entered the license agreement with  
4 EPTI?

5 A Two.

6 Q To whom did VEO sell those EPTI boilers?

7 A Actually they weren't EPTI boilers, they were Aalborg  
8 I believe at the time. They were sold to Heinz -- excuse  
9 me, Armstrong Services for the Heinz plant in Muscatine,  
10 Iowa.

11 Q Did anyone from VEO play any role in the design of  
12 the two Aalborg boilers that were sold to the Heinz plant?

13 A What do you mean by design?

14 Q Have any input into the design of the boilers?

15 A Yes.

16 Q Who?

17 A Myself.

18 Q Anyone else?

19 A No.

20 Q What was the input that you had into the design of  
21 the boilers for the Heinz plant?

22 A As related to the steam capacity, as it related to  
23 the internal design of the boiler, and also as it related  
24 to the heat transfer aspects as it related to efficiency.

25 Q Anything else?

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1 inquires, which are not in licensor's range of products,  
2 subject to and prior notice to the licensor, licensee will  
3 be free to enter into separate alternative agreements. Do  
4 you see that?

5 A Yes.

6 Q Did you understand that the products that were being  
7 licensed under the agreement were to be industrial  
8 watertube package steam generators?

9 A Yes.

10 Q And a generator is an entire system, is that correct?

11 A No, not necessarily.

12 Q What else is it?

13 A What else is what, a generator?

14 Q Right?

15 A In particular I believe that's referring to the  
16 boiler.

17 Q So the reference to watertube package steam  
18 generators reference to a boiler?

19 A Yes.

20 Q Then it says products shall include but not be  
21 limited to the items set forth in Annex 1. What did you  
22 understand the purpose of Annex 1 to be in the license  
23 agreement as it was being negotiated?

24 A It was just kind of a guideline so to speak, nothing  
25 specific.

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- 1 Q Why do you say that?
- 2 A Because there was a lot of assumptions for operating
- 3 capacities and what not.
- 4 Q Assumptions by whom?
- 5 A I guess at the time it must have been Erie Power.
- 6 Q Did anyone ever tell you that Annex 1 was just a
- 7 guideline?
- 8 A I believe so, yeah.
- 9 Q Who?
- 10 A Mark.
- 11 Q When did he tell you that Annex 1 was just a
- 12 guideline?
- 13 A Probably during the discussions of the license
- 14 agreement.
- 15 Q Do you know for a fact that Mark White told you that
- 16 Annex 1 was just a guideline?
- 17 A Well we discussed it, so I guess it would be a fact.
- 18 Q Did he use the word guideline to describe Annex 1?
- 19 A I believe so.
- 20 Q When?
- 21 A During the discussions of the license agreement.
- 22 Q When during the discussions did he describe it as a
- 23 guideline?
- 24 A I don't know.
- 25 Q Do you have any documentation showing that Mark White

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1 copy the KPSC software program or use the existing output  
2 files to design boilers that were not Keystone boilers?

3 A No.

4 Q Did you have any discussions with Mark White prior to  
5 the execution of Annex 1 to the license agreement about  
6 membrane walls or welded wall technology?

7 MR. SHEEAN: Can you read that back please?

8 (Whereupon, the Reporter read back the last  
9 question.)

10 MR. SHEEAN: And I'm going to object as vague,  
11 simply because I'm not sure that conditionally the annex  
12 constitutes execution, but subject to that, he can answer.

13 MR. GISLESON: I'll rephrase the question.

14 Q (By Mr. Gisleson) Did you have any conversations  
15 with Mark White between December 20, 2003, when Mark White  
16 sent to Shawn Brewer the proposed data table and a draft of  
17 the license agreement, and February 3, 2003, when you  
18 initialed Annex 1?

19 A I knew Mark and I had a conversation one time, and I  
20 think it was in that time frame, regarding suppliers.  
21 As we were getting ready to get geared up to manufacture  
22 the boilers, I had asked Mark where, you know, where they  
23 went to get their drums drilled, where they went to get  
24 membranes, you know, put onto the tubes, you know, what  
25 their list of suppliers were, just in a manner of trying to

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1 gear up for that.

2 Q What did he tell you?

3 A There's a lady from -- I think it was a lady that was  
4 filling me in, somebody from EPI I believe sent us over a  
5 vendor list to where we could source some of those  
6 materials if needed.

7 Q Was that the only conversation in which you and Mark  
8 White mentioned in any way either welded walls or membrane  
9 walls?

10 MR. SHEEAN: Objection. You mean during that  
11 same time frame?

12 Q (By Mr. Gisleson) During that same time frame?

13 A I don't know. I mean we might have had some others,  
14 but right now that's what comes to mind.

15 Q During that conversation about suppliers, did you and  
16 he discuss whether the membrane walls were within the scope  
17 of the license agreement?

18 A Well, I mean it was, so I don't know if it was  
19 necessarily discussed, but it was part of it. It says it.

20 MR. GISLESON: Move to strike as non-responsive.

21 Q (By Mr. Gisleson) The question was during that  
22 conversation with Mark White, did you and he specifically  
23 discuss whether the membrane walls were within the scope of  
24 license agreement?

25 A I believe we did.

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1 Q You discussed the scope of the license agreement  
2 during the call about suppliers?

3 A We talked about membrane wall construction, I mean  
4 relative to where some of those materials were sourced,  
5 because we were trying to put together a program, you know,  
6 where you could support the manufacturing of it. So I mean  
7 I guess why would we be discussing membrane walls if it  
8 wasn't in the license agreement.

9 Q Did VEO, in fact, source membrane walls from the  
10 location identified by EPTI?

11 A No, it didn't need to. We were able to get some  
12 information where we could sit down and meet with the  
13 different suppliers here in Oklahoma to be able to source  
14 it closer to home for quality control purposes.

15 Q Did you and Shawn Brewer have any conversations about  
16 membrane wall technology or welded walls for Keystone  
17 boilers between the time that you received the initial  
18 draft of the license agreement and the time that you  
19 initialed Annex 1?

20 A I don't recall right now.

21 Q Does Parfab still have copies of manufacturing  
22 drawings for the Keystone provided by VEO?

23 A I believe so, yes.

24 Q Who was responsible for recovering any drawings  
25 provided to Parfab pertaining to the Keystone?

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1 granted that right?

2 MR. GISLESON: Well move to strike as being  
3 argumentative.

4 Q (By Mr. Gisleson) The point is simply this, did  
5 Chris Petcos or anyone else from Indeck Keystone Energy  
6 ever authorize VEO to sell watertube boilers under the  
7 Keystone trademark that deviated from the parameters as  
8 described in the second paragraph of his e-mail?

9 MR. SHEEAN: Same objection.

10 A The only way I can answer that is that the license  
11 agreement allowed for us to sell the boilers that we were  
12 selling and that's it. That's all I have to say.

13 Q (By Mr. Gisleson) I understand that's your position,  
14 but the question is whether anyone from IKE expressly  
15 authorized VEO to continue selling boilers that included  
16 membrane wall or welded wall technology or other features  
17 that were outside the scope of Annex 1 to the license  
18 agreement?

19 MR. SHEEAN: Same objection.

20 A Same answer.

21 Q (By Mr. Gisleson) No one provided that  
22 authorization?

23 MR. SHEEAN: Same objection.

24 A I did not say that.

25 Q (By Mr. Gisleson) Can you identify anyone from IKE

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1 who authorized VEO to sell boilers that were outside the  
2 scope of the boiler set forth in Annex 1 of the license  
3 agreement?

4 MR. SHEEAN: Objection, asked and answered.

5 A I don't think I have anything else to add to that, my  
6 previous answer.

7 Q (By Mr. Gisleson) What you're saying is you believe  
8 you had the right under the license agreement?

9 A Yes.

10 Q But my question is did anyone from IKE state, either  
11 verbally or in writing to you, after IKE became the  
12 licensor, that VEO was authorized to sell boilers that  
13 deviated from the boilers described in Annex 1 to the  
14 license agreement?

15 MR. SHEEAN: Same objection.

16 A Absolutely, yes.

17 Q (By Mr. Gisleson) Who?

18 A Whoever was in charge of I guess managing the license  
19 agreement.

20 Q At IKE?

21 A Yes.

22 Q How?

23 A Our license agreement, it's in writing, what we're  
24 allowed to sell.

25 Q In the license agreement?

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1 A Yes.

2 Q Did you receive anything from IKE other than the  
3 license agreement that specifically authorized VEO to sell  
4 boilers that differed from the boilers described in Annex 1  
5 to the license agreement?

6 MR. SHEEAN: Objection, asked and answered. He's  
7 already identified the license agreement and he's  
8 identified the invoices and the checks that were cashed.

9 MR. GISLESON: It's been asked, but it hasn't  
10 been answered.

11 A I just have the same answer, the license agreement.  
12 So that's it.

13 Q (By Mr. Gisleson) The only basis that you have for  
14 saying that VEO could sell boilers outside the scope of  
15 Annex 1 is what is in the terms of the license agreement  
16 itself?

17 MR. SHEEAN: Objection, asked and answered, and  
18 now you're mischaracterizing his prior testimony. He's  
19 already identified specifically the invoices submitted by  
20 IKE and the fact that they cashed the checks.

21 Q (By Mr. Gisleson) What was in the invoices submitted  
22 by IKE that led you to believe that VEO could sell boilers  
23 that were outside the parameters in Annex 1 of the license  
24 agreement?

25 A I don't know.

DAVIDSON REPORTING

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY, LLC, :  
Plaintiff :  
v. : Case No. 04-325 Erie  
VICTORY ENERGY OPERATIONS, LLC, :  
Defendant :

Deposition of TERRENCE SCOTT PAWLOWSKI, taken  
before and by Sondra A. Black, Notary Public in  
and for the Commonwealth of Pennsylvania, on Thursday,  
November 10, 2005, commencing at 9:03 a.m., at the  
offices of Marshall Dennehey Warner Coleman & Goggin,  
1001 State Street, Erie, Pennsylvania 16501.

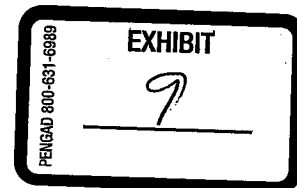
For the Plaintiff:

John K. Gisleson, Esquire  
Schnader Harrison Segal & Lewis, LLP  
Fifth Avenue Place  
120 Fifth Avenue, Suite 2700  
Pittsburgh, PA 15222

For the Defendant:

Christopher T. Sheean, Esquire  
Wildman Harrold Allen & Dixon, LLP  
225 West Wacker Drive  
Chicago, IL 60606

Reported by Sondra A. Black  
Ferguson & Holdnack Reporting, Inc.



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<p>1 A. Where are you at?</p> <p>2 Q. VEO1655 through VEO1662.</p> <p>3 A. Yes.</p> <p>4 Q. What do those drawings show, as you understand them?</p> <p>5 A. The standard M series Keystone boiler.</p> <p>6 Q. Do these drawings for the standard M series Keystone</p> <p>7 boiler show tangent tubes?</p> <p>8 A. Yes, they do.</p> <p>9 Q. On which pages?</p> <p>10 A. Page 1657, 1658, 1659, 1660, 1661, and 1662.</p> <p>11 Q. Where on the drawings are the tangent tubes</p> <p>12 identified? And what I'll do is give you a highlighter, and</p> <p>13 if you could highlight on your copy of the deposition</p> <p>14 exhibit --</p> <p>15 MR. SHEEAN: Well, I'm going to object to that.</p> <p>16 Only because the deposition exhibit was used in Bob</p> <p>17 Gdaniec's deposition where he didn't highlight on</p> <p>18 it, so --</p> <p>19 MR. GISLESON: We can mark it as another copy.</p> <p>20 MR. SHEEAN: I don't have another copy of Gdaniec</p> <p>21 20 that doesn't have writing all over it. If you</p> <p>22 want to use yours, that's fine.</p> <p>23 Q. I'd like to show you what's been marked now as</p> <p>24 Pawlowski 5, which is the Keystone engineering design guide.</p> <p>25 And if you could mark on the first page where the tangent</p>	<p>1 those bearing the KDB prefix?</p> <p>2 A. They should, yes. If memory serves me right, I</p> <p>3 think that's all they used throughout the entire standard</p> <p>4 line.</p> <p>5 Q. You were asked questions about the sectional view of</p> <p>6 the steam drum internals with the vortex cans and the</p> <p>7 Chevrons that were shown either in a power point presentation</p> <p>8 or in sales literature. Do you recall that?</p> <p>9 A. Yes.</p> <p>10 Q. Are those the only drawings of the drum internals</p> <p>11 that EPTI or its predecessors had?</p> <p>12 A. Those are the only drawings.</p> <p>13 Q. I'll rephrase it. Did EPTI or its predecessors have</p> <p>14 more detailed drawings --</p> <p>15 A. Yes.</p> <p>16 Q. -- of the drum internals?</p> <p>17 A. Yes.</p> <p>18 Q. Were the detailed drawings the ones that were used</p> <p>19 to design the drum internals?</p> <p>20 MR. SHEEAN: Objection. Lack of foundation.</p> <p>21 Q. You can answer.</p> <p>22 A. They're the ones used to manufacture the drum -- the</p> <p>23 units, yes.</p> <p>24 Q. Were the sectional views used in the power point</p> <p>25 presentation you looked at, or in any sales brochures, the</p>
Page 111	Page 113
<p>1 tubes are shown, which is VEO1657. Where the tangent tubes</p> <p>2 are on that page.</p> <p>3 (Pawlowski Deposition Exhibit No. 5 marked for</p> <p>4 identification.)</p> <p>5 A. Every single tangent tube?</p> <p>6 Q. Yes. You can just highlight it in so it's clear</p> <p>7 where they are.</p> <p>8 A. My eyesight's not great so -- they're small.</p> <p>9 Q. So you highlighted tubes appearing in the middle</p> <p>10 drawing at the top of the page as well as at the bottom of</p> <p>11 the page; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. To the extent those drawings appear on subsequent</p> <p>14 pages, you'd highlight the same aspects?</p> <p>15 A. That is correct.</p> <p>16 Q. The sheets have a reference in the lower right-hand</p> <p>17 corner to KDB. Do you see those initials?</p> <p>18 A. That's correct.</p> <p>19 Q. What does KDB stand for?</p> <p>20 A. That was the engineer standard numbers for the M</p> <p>21 series.</p> <p>22 Q. What's meant by engineering standard numbers?</p> <p>23 A. They were a series of drawings and standard pages</p> <p>24 which were constructed together for the M series.</p> <p>25 Q. So that the standard drawings for the M series are</p>	<p>1 drawings that were used to actually design and manufacture?</p> <p>2 A. There's not enough detail to do that.</p> <p>3 Q. So that, in your experience, a third party looking</p> <p>4 at the sectional views in that power point presentation or in</p> <p>5 sales literature would not have the ability to design and</p> <p>6 manufacture the drum internals with those cross sections?</p> <p>7 A. Yes.</p> <p>8 MR. GISLESON: Those are all the questions I have.</p> <p>9</p> <p>10 REDIRECT EXAMINATION</p> <p>11 BY MR. SHEEAN:</p> <p>12</p> <p>13 Q. Just a couple follow-up questions, sir. Go back to</p> <p>14 what we've now marked Pawlowski Deposition Exhibit No. 5.</p> <p>15 A. Where's that at?</p> <p>16 Q. That's the design guide. Look at VEO1580. No. 6,</p> <p>17 projected radiant heating surface, we talked about that</p> <p>18 before with respect to the M series standard summary chart</p> <p>19 that we were looking at. Do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. PRHS. Do you see down -- it says, "Where AFW equals</p> <p>22 flat projected area, a front wall minus the burner when a</p> <p>23 welded front wall is used." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And that references the inclusion of a front wall on</p>

29 (Pages 110 to 113)

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1 a boiler; is that correct?  
 2 A. Yes.  
 3 Q. And then, if you turn to the next page, 1581, it  
 4 references, "Boilers without superheaters use equation three  
 5 for B, and where," in the second one, "flat projected area of  
 6 welded rear wall or flat projected area of tubes for a tube  
 7 and rear wall." Do you see that?  
 8 A. That's ARW?  
 9 Q. Yes, sir.  
 10 A. Yes.  
 11 Q. And that's a reference to a welded rear wall,  
 12 correct?  
 13 A. Yes. Along with the tube and tile rear wall.  
 14 Q. Right. It references both, right?  
 15 A. Yes.  
 16 Q. You were just discussing with Mr. Gisleson the  
 17 standard M series Keystone drawings, and you said that they  
 18 had a prefix of KD; is that right?  
 19 A. I --  
 20 MR. GISLESON: KDB.  
 21 A. Yes.  
 22 Q. KDB. Look back at Annex 1 that we were looking at a  
 23 minute ago, which is Fuhrman 24, on Page 23.  
 24 A. What page do you want me to look at?  
 25 Q. 23 of the annex. You see that drawing -- and that's

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1 a standard M series drawing, correct?  
 2 A. It's pretty small. It's hard for me to focus, but  
 3 it appears to be.  
 4 Q. And the bottom right corner says, "KD 3.2." Do you  
 5 see that?  
 6 A. I'll take your word for it.  
 7 Q. Do you have an understanding of why, with respect to  
 8 this drawing, it would be identified as KD as opposed to KDB?  
 9 A. No. You'd have to ask someone else that question.  
 10 Q. Is there any significance to the KD designation?  
 11 Does it refer to anything --  
 12 A. I believe the KD stands for Keystone design.  
 13 Q. We looked earlier today at the sales manual, which  
 14 was Gdaniec 7, and I want to direct your attention to IKE22.  
 15 Do you see that?  
 16 A. Okay.  
 17 Q. And that is identified as, "Keystone M series  
 18 optional features, front wall welded tube and membrane with  
 19 watercooled burner throat." Do you see that?  
 20 A. At the top, yes.  
 21 Q. Is this a drawing that would appear, typically, in  
 22 Zurn Energy, Aalborg, or Erie Power sales materials?  
 23 A. It might have.  
 24 Q. Do you see the number at the bottom right? It says,  
 25 "KD 46."

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1 A. Yeah.  
 2 Q. Do you have an understanding that this is another in  
 3 the series of KD drawings?  
 4 A. Yes.  
 5 MR. SHEEAN: That's all I have.  
 6  
 7 RECROSS-EXAMINATION  
 8 BY MR. GISLESON:  
 9  
 10 Q. Just finally, looking at the Keystone engineering  
 11 design guide, which was marked a Pawlowski Exhibit 5, your  
 12 attention was pointed to 1580 and 1581. First, was there a  
 13 reference to the M series on either of those two pages?  
 14 A. No.  
 15 Q. And second, as to the provisions that were pointed  
 16 out to you on those pages, do those apply to O style Keystone  
 17 boilers that are not M series?  
 18 A. They would -- yes.  
 19 MR. GISLESON: Those are all the questions I have.  
 20  
 21 FURTHER REDIRECT EXAMINATION  
 22 BY MR. SHEEAN:  
 23  
 24 Q. Mr. Pawlowski, do you have any understanding of why  
 25 Victory Energy would be provided with Keystone engineering

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1 design guide materials for what you term to be O style  
 2 boilers that are outside the scope of an M series?  
 3 A. No.  
 4 MR. SHEEAN: Those are all the questions I have.  
 5 MR. GISLESON: The witness will read and sign.

(Deposition concluded at 1:26 p.m.)

30 (Pages 114 to 117)

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY, LLC, a  
Delaware limited liability company,

Plaintiff

v.

VICTORY ENERGY OPERATIONS, LLC, a  
Delaware limited liability company,

Defendant.

CIVIL ACTION

No. 04-CV-325E

Judge Sean J. McLaughlin

**SUPPLEMENTAL AFFIDAVIT OF MARK J. WHITE**

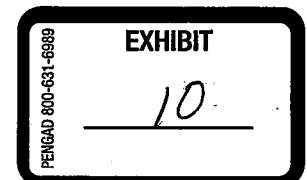
I, Mark J. White, being duly sworn on oath, depose and state:

1. EPTI would frequently modify the design or components of a boiler in order to improve the thermal performance of a boiler based on the information provided by the KPSC software.

2. VEO never submitted a proposal to a potential customer for a tangent tube Keystone Boiler.

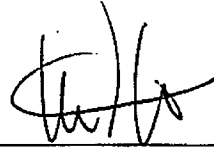
3. The March 26, 2004 letter was sent in conjunction with a longer letter setting forth EPTI's offer to sell rights to manufacture and sell a portion of the Keystone boiler line, which strongly suggests EPTI was attempting to gain leverage against VEO to exact a higher price.

4. Through discovery, VEO provided IKE with extensive information regarding the boilers VEO sold during the License Agreement, including design drawings, sales proposals and correspondence.



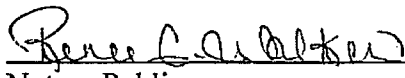
I affirm, under the penalties for perjury, that the foregoing representations are true.

Further affiant sayeth not.

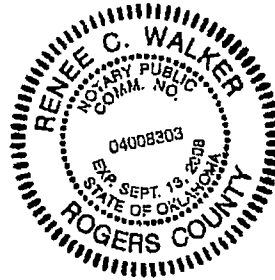


Mark J. White

SUBSCRIBED AND SWORN TO  
before me this 11 day of April, 2006.



Notary Public



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
INDECK KEYSTONE ENERGY, )  
LLC, a Delaware limited )  
liability company, )

Plaintiff, ) CONFIDENTIAL

vs. ) CIVIL ACTION

VICTORY ENERGY OPERATIONS, ) Judge Sean J. McLaughlin  
LLC, a Delaware limited )  
liability company, )

Defendant. )

The videotape deposition of MARK WHITE taken on  
behalf of the Plaintiff before Pamela B. Stinchcomb,  
Certified Shorthand Reporter in and for the State of  
Oklahoma, on the 1st day of February, 2006, in the  
City of Tulsa, State of Oklahoma, pursuant to the  
stipulations of the parties.

PAMELA B. STINCHCOMB, CSR #1544  
DAVIDSON REPORTING SERVICE  
5508 South Lewis Avenue  
Tulsa, Oklahoma 74105  
(918) 745-9959

#### APPEARANCES

FOR THE PLAINTIFF: MR. JOHN K. GISLESON  
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Suite 2700  
Pittsburgh, Pennsylvania

FOR THE DEFENDANT: MR. CHRISTOPHER T. SHEEAN  
Attorney at Law  
225 West Wacker Drive  
Chicago, Illinois 60606

Also appearing:  
Chris Petcos  
John Viskup  
Martin Swabb

#### STIPULATIONS

It is hereby stipulated and agreed by and  
between the parties hereto that this deposition is  
being taken pursuant to notice and that the same may  
be taken at this time and place.

It is further stipulated and agreed that this  
deposition may be taken pursuant to the Federal Rules  
of Civil Procedure and that the same may be taken at  
this time and place.

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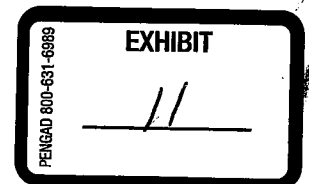
Page 5

1 MARK WHITE,  
2 being first duly sworn to tell the truth, the whole  
3 truth, and nothing but the truth, testified as  
4 follows:  
5 DIRECT EXAMINATION  
6 BY MR. GISLESON:  
7 Q. State your name, please.  
8 A. Mark White.  
9 Q. Mr. White, are you here to testify as the  
10 authorized corporate designee of Victory Energy  
11 Operations concerning certain matters in a deposition  
12 notice?  
13 A. Yes, I am.  
14 Q. I'd like to show you what's been marked as  
15 Exhibit 1. Would you let me know whether you are  
16 here to testify as the authorized representative  
17 concerning Items 1 through 20?  
18 A. If I am here to testify?  
19 Q. Yes.  
20 A. Yes.  
21 Q. Item Number 1 is: "The duration of,  
22 participants in, and subjects of negotiation for the  
23 License Agreement, including identification of drafts  
24 of the Agreement." What was the duration of the  
25 negotiation of the license agreement between Erie

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Page 7

1 Power Technologies and Victory Energy Operations?  
2 A. Well, I answer this question both as a  
3 representative as Victory Energy and also an  
4 ex-employee of EPTI. It's hard to separate the two  
5 in terms of the negotiations because I was at EPTI  
6 during the negotiations and later became an employee  
7 of Victory Energy.  
8 Q. So you understand that the testimony you're  
9 giving is on behalf of Victory?  
10 A. I understand that but, once again, it's  
11 hard to -- it's impossible for me to provide  
12 testimony and not state that I was involved in the  
13 negotiations, for example, at EPTI. That being the  
14 case, the negotiations first began sometime in around  
15 December of 2002. I'm not sure exactly the exact  
16 time and date, but it would be around that time  
17 frame.  
18 Shawn Brewer had given me a call while I  
19 was an employee of EPTI, just basically stating they  
20 had an interest in forming a license agreement or  
21 some type of an agreement with EPTI that would allow  
22 them to market and sell "O" style Keystone watertube  
23 package boilers. And the next step was to -- for me,  
24 at the time I was a EPTI, to bring that up to  
25 management and see if they had interests, and there



1 A. The agreement hasn't changed.  
 2 Q. Did IKE ever provide consent to VEO to make  
 3 a modification to the design of the Keystone?  
 4 A. No, because no modification was sent to IKE  
 5 by VEO.  
 6 Q. Let's skip ahead for a moment to Item  
 7 Number 5 since we're to the subject. Item Number 5  
 8 is the nature and extent of any modifications made by  
 9 VEO to Keystone boilers. Did VEO make my  
 10 modifications to the Keystone boiler?  
 11 A. On two projects. On the Dallas/Ft. Worth  
 12 airport project and Occidental Petroleum project with  
 13 Tejas.  
 14 Q. Did VEO receive EPTI's consent with respect  
 15 to those modifications?  
 16 A. Yes.  
 17 Q. Were there any other projects for which VEO  
 18 received consent to make modifications?  
 19 A. Not that I'm aware of.  
 20 Q. What were the modifications in the DFW  
 21 project?  
 22 A. The height of the unit changed and actually  
 23 Erie Power was ~~given~~ a purchase order by Victory  
 24 Energy to make the modifications. The modifications  
 25 were primarily made by Erie Power to include a

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1 Annex 1 to the license agreement, were there any such  
 2 boilers?  
 3 A. Well, once again, Annex 1 was a guideline,  
 4 so in terms of Annex 1, I don't know.  
 5 Q. Did any of the boilers that were sold by  
 6 VEO while IKE has been the licensor have design  
 7 characteristics as shown in the drawings in Annex 1  
 8 on Pages 23, 24 and 25?  
 9 MR. SHEEAN: Objection, vague. Can  
 10 you read that back? I just didn't follow it. Maybe  
 11 I'll retract my objection if I hear it.  
 12 (The record was read back by the court  
 13 reporter as requested.)  
 14 MR. SHEEAN: I'm objecting as vague.  
 15 Are you asking if any of the boilers had those  
 16 characteristics in Annex 1?  
 17 MR. GISLESON: As -- yeah, as sold by  
 18 VEO.  
 19 MR. SHEEAN: Any of the  
 20 characteristics in there?  
 21 MR. GISLESON: On Pages 23, 24 and 25.  
 22 MR. SHEEAN: Okay. I withdraw my  
 23 objection then. You may answer.  
 24 A. Yes.  
 25 Q. (By Mr. Gisleson) Which ones?

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1 larger -- the tube diameter in the front wall was --  
 2 yeah, in the front wall was increased. They  
 3 performed a circulation study to insure that the  
 4 boiler that's been designed would, I guess, produce  
 5 as designed and then wouldn't have any problems with  
 6 that. And I think, you know, just an overall look at  
 7 any of the changes that were made.  
 8 MR. SHEEAN: Let's take a break.  
 9 (break was taken)  
 10 A. I need to retract my previous comment  
 11 relative to did Victory Energy make any modifications  
 12 to the project. The answer is no. If in the eyes of  
 13 Erie Power Technologies, the Dallas/Ft. Worth  
 14 airport, and Occidental Petroleum projects -- and  
 15 again, in their eyes included modifications, we did  
 16 receive a consent.  
 17 Q. (By Mr. Gisleson) Did VEO believe it was  
 18 making modifications on the DFW project?  
 19 A. No.  
 20 Q. Did EPTI consent to the changes that VEO  
 21 made to the boiler for the DFW project?  
 22 A. Yes.  
 23 Q. What were the changes? Was it increase in  
 24 height and a larger tube diameter?  
 25 A. I retracted that comment. We said -- I

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1 A. Which projects?  
 2 Q. Yes.  
 3 A. I would have to go through each and every  
 4 one of them to determine that.  
 5 Q. Can you identify any projects for which the  
 6 boiler had a cross-section as shown on Page 23 of  
 7 Annex 1?  
 8 MR. SHEEAN: Objection, vague.  
 9 A. Define cross-section.  
 10 Q. (By Mr. Gisleson) Did you identify Page 23  
 11 as showing is a cross-section of the Keystone boiler?  
 12 A. Yes.  
 13 Q. Did any of the boilers that were sold by  
 14 VEO during the time that IKE was a licensor have a  
 15 cross-section as shown on Page 23 of Annex 1?  
 16 MR. SHEEAN: Objection, vague. Are  
 17 you -- are you asking whether or not a boiler matched  
 18 at every physical detail the drawing on Page 23?  
 19 MR. GISLESON: Yes.  
 20 A. It's impossible to tell. There are no  
 21 transverse pitch, no longitudinal pitch, no tube  
 22 diameter. The drawing is incomplete so I can't  
 23 answer your question.  
 24 Q. (By Mr. Gisleson) Did VEO sell any boilers  
 25 during the time that IKE has been the licensor that

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1 said -- I retracted my answer and I said there were  
 2 no modifications.  
 3 Q. What were the ways in which the DFW boiler  
 4 deviated from the standard design of the Keystone  
 5 boiler?  
 6 A. It didn't.  
 7 Q. Did VEO create any modifications to the  
 8 design of the Keystone that it did not disclose to  
 9 the licensor?  
 10 A. No.  
 11 Q. Under Item Number 6, the nature and extent  
 12 of any improvements made my VEO to Keystone boilers,  
 13 did VEO make any improvements to the Keystone boiler  
 14 design?  
 15 A. No.  
 16 Q. Did VEO ever request approval to make  
 17 improvements to a Keystone boiler?  
 18 A. No.  
 19 Q. Has VEO made any improvements to a Keystone  
 20 boiler that it has not disclosed to the licensor?  
 21 A. No.  
 22 Q. Under Item 7, the identification of  
 23 Keystone boilers sold by VEO during the time that IKE  
 24 has been the licensor that had designed  
 25 characteristics that are depicted or referenced in

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1 had tangent tube furnace and outer walls?  
 2 A. No.  
 3 Q. Did VEO sell any boilers during the time  
 4 that IKE has been the licensor that had a refractory  
 5 front wall?  
 6 A. No.  
 7 Q. Did VEO sell any boilers during the time  
 8 that IKE was the licensor that did not have a water  
 9 cooled burner throat?  
 10 A. I don't believe so.  
 11 Q. Did all the boilers sold by VEO have water  
 12 cooled burner throats while IKE was the licensor?  
 13 A. Yes.  
 14 Q. I understand that it's VEO's position that  
 15 Annex 1 is just a guide. Did VEO sell any boilers  
 16 during the time that IKE was a licensor that followed  
 17 the guide in Annex 1?  
 18 MR. SHEEAN: Objection, vague as to  
 19 the term "followed" and as to the term "guide".  
 20 A. I don't know. I would have to go back  
 21 and -- and look through all of the information in the  
 22 guide and compare it to everything else so -- so I  
 23 don't know.  
 24 Q. (By Mr. Gisleson) Going back to Item Number  
 25 2, which was VEO's interpretation of the license

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1 A. They may have. I don't recall.  
 2 **Q. Did VEO receive drawings of membrane walls**  
 3 **from EPTI?**  
 4 A. Yes.  
 5 **Q. Did VEO utilize the membrane wall drawings**  
 6 **that EPTI provided in the design of Keystone boilers?**  
 7 A. Yes, we did.  
 8 **Q. Were those membrane wall drawings created**  
 9 **by EPTI prior to the inception of the license**  
 10 **agreement?**  
 11 MR. SHEEAN: Objection, foundation.  
 12 A. They were -- I don't know. I can't speak  
 13 for when they were created.  
 14 **Q. (By Mr. Gisleson) Did VEO ever receive**  
 15 **drawings of water cooled burner throats from EPTI?**  
 16 A. I believe so.  
 17 **Q. Did VEO ever prepare a list of the**  
 18 **technical information that it received from EPTI?**  
 19 A. No, not to my knowledge.  
 20 **Q. Was there anyone at VEO who oversaw**  
 21 **management of the Keystone technical information**  
 22 **received from EPTI?**  
 23 A. I managed, as I mentioned before, the  
 24 drawings, the workstation and our drafting  
 25 department, Carl Logan, would have managed any of the

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1 project drawings. The design manuals, I manage -- I  
 2 manage those. I'm returning all those as I said  
 3 before.  
 4 **Q. Can you identify any other drawings or**  
 5 **technical information provided by EPTI to VEO?**  
 6 A. Not at this time.  
 7 **Q. Item Number 4 is drawings and other designs**  
 8 **created by VEO that incorporate in whole or in part**  
 9 **drawings, designs and other technical information**  
 10 **provided by EPTI to VEO. Per all of the drawings**  
 11 **that VEO created from Keystone boilers it sold, did**  
 12 **it incorporate Keystone drawings --**  
 13 MR. SHEEAN: Objection.  
 14 **Q. (By Mr. Gisleson) -- that it received from**  
 15 **EPTI?**  
 16 MR. SHEEAN: Objection, vague,  
 17 overbroad.  
 18 A. Could you better define your question? I  
 19 don't quite understand.  
 20 **Q. (By Mr. Gisleson) Did VEO create any of its**  
 21 **own drawings that did not incorporate information**  
 22 **received from EPTI pertaining to Keystone boilers?**  
 23 MR. SHEEAN: Objection, overly broad,  
 24 vague.  
 25 A. Well, I'm not -- I'm not real sure what

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1 your -- your question is specifically but I will make  
 2 an attempt to answer it. You're asking for --  
 3 MR. SHEEAN: Mark, I want to caution  
 4 you if you don't understand the question, I'd ask you  
 5 not to try to answer it.  
 6 A. I don't know.  
 7 **Q. (By Mr. Gisleson) VEO received the standard**  
 8 **drawings for the Keystone "M" series, correct?**  
 9 A. I don't know what was standard and what  
 10 really -- you know -- well, let me rephrase my  
 11 question. We received drawings, none of which were  
 12 marked as standard.  
 13 **Q. What was on the marked up ~~drawings~~ drawings?**  
 14 A. I don't know.  
 15 **Q. Did VEO use the drawings that it received**  
 16 **from EPTI to develop its own drawings for Keystone**  
 17 **boilers?**  
 18 A. Like -- I believe I had answered this  
 19 question. We received a hard copy set of drawings  
 20 that had to be transferred to an Auto CAD format.  
 21 That occurred and then those are considered project  
 22 drawings. So I think the answer is yes, but I had  
 23 answered that previously.  
 24 **Q. Did all of the project drawings incorporate**  
 25 **the Keystone drawings that EPTI provided to VEO?**

1 MR. SHEEAN: Objection. Hopelessly  
 2 broad and vague.  
 3 A. I don't know.  
 4 **Q. (By Mr. Gisleson) Can you identify any**  
 5 **drawings that VEO created that did not rely on**  
 6 **information provided by EPTI?**  
 7 MR. SHEEAN: Same objections.  
 8 A. I don't know.  
 9 **Q. (By Mr. Gisleson) Does VEO still have**  
 10 **copies of all of the project drawings for each of the**  
 11 **boilers sold under the license agreement?**  
 12 A. Yes, we do.  
 13 **Q. Is VEO returning those drawings to IKE?**  
 14 A. That's yet to be determined.  
 15 **Q. When will that determination be made?**  
 16 A. I don't know.  
 17 **Q. Item Number 19 is the identification of**  
 18 **documents currently in VEO's possession, custody or**  
 19 **control that concern, refer or relate to Keystone**  
 20 **direct fire -- direct-fired watertube boilers. What**  
 21 **documents pertaining to Keystone boilers are still in**  
 22 **VEO's possession?**  
 23 MR. SHEEAN: Objection, asked and  
 24 answered.  
 25 A. We have the design manual and we have

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1 project related drawings that are in our possession,  
 2 as well.  
 3 **Q. (By Mr. Gisleson) Anything else?**  
 4 A. Not that I can think of right now. I will,  
 5 if I may, supplement my answer. The design manuals  
 6 will be returned as soon as I can get out of these  
 7 depositions and most likely this week.  
 8 **Q. Does VEO need to retain project drawings**  
 9 **for Keystone boilers that are no longer in the**  
 10 **warranty period?**  
 11 A. Well, the license agreement does not  
 12 require Victory to -- to provide those drawings to  
 13 IKE. So either it requires them to maintain those  
 14 after the warranty period is expired really isn't  
 15 relevant.  
 16 **Q. Does Victory maintain an O and M manual for**  
 17 **each of the boilers that were sold during the**  
 18 **license?**  
 19 A. An O and M manual is developed for each  
 20 project.  
 21 **Q. What's an E O and M manual?**  
 22 A. I don't know.  
 23 **Q. Does VEO still have copies of sales**  
 24 **proposals that it submitted for Keystone boilers?**  
 25 MR. SHEEAN: Objection, vague.

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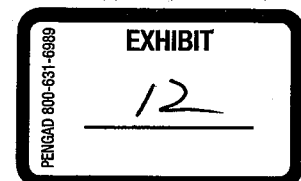
1 A. I don't know.  
 2 **Q. (By Mr. Gisleson) Does VEO have any**  
 3 **Keystone drawings on its computer system?**  
 4 MR. SHEEAN: Objection, asked and  
 5 answered.  
 6 A. We do. We have the project drawings which  
 7 are on Auto CAD. We're also -- keeping in mind we're  
 8 also still executing projects which we have not  
 9 delivered yet, so there are still drawings in  
 10 progress.  
 11 **Q. (By Mr. Gisleson) Item Number 17 is the**  
 12 **basis for VEO's belief that virtually every**  
 13 **characteristic, component and feature of the Keystone**  
 14 **direct-fire watertube boilers is publicly known and**  
 15 **in the public domain with the exception of the**  
 16 **Keystone mark and KPSC software program used to rate**  
 17 **the boilers. Can you identify the basis that VEO has**  
 18 **for that belief?**  
 19 A. Well, outside of the mark and the KPS  
 20 program, yeah, we believe that through the public  
 21 domain and also through third party, that this  
 22 information is available in the -- in the  
 23 marketplace.  
 24 **Q. Why does VEO believe it's available in the**  
 25 **marketplace?**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY LLC, )  
 )  
Plaintiff, )  
 )  
VS ) Civil Action No. 04-325 Erie  
 )  
VICTORY ENERGY OPERATIONS, ) Judge Sean J. McLaughlin  
LLC, )  
 )  
Defendant ) JURY TRIAL DEMANDED

ORAL AND VIDEOTAPED DEPOSITION OF  
STEPHEN YOUNG KANG  
December 13, 2005  
Volume 1 of 1

Oral Deposition of STEPHEN YOUNG KANG, produced as a witness at the instance of MR. CHRISTOPHER T. SHEEAN, ATTORNEY FOR DEFENDENT VICTORY ENERGY OPERATIONS, LLC, and duly sworn, was taken in the above-styled and numbered cause on December 13, 2005, from 1:50 p.m. to 5:03 p.m., before Lydia P. Battle, CSR, RPR, in and for the State of Texas, reported by stenographic means, at the offices of Jones & Young, P.C., 2700 Post Oak Blvd., Suite 1350, Houston, Harris County, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record attached hereto.



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1 then, of course, when I did that, Mark White went to Dan  
2 Levstek or Bob Gdaniec of Erie Power to discuss what  
3 the -- what the pressures per pound would be or what the  
4 technical specification would be.

5 Q Okay. Reading the definition of "Products" -- I  
6 know you're a lawyer -- it says, "'Products' shall mean  
7 natural circulation, industrial watertube packaged steam  
8 generators with a steam capacity range beginning at  
9 29,000 pph up to and including 150,000 pph." Do you see  
10 that?

11 A Yes.

12 Q The second sentence says, "Products shall  
13 include but not be limited to the items set forth in  
14 Annex I." Do you see that?

15 A Yes.

16 Q Okay. Was there any discussion about the  
17 meaning of the term "Products shall include but not be  
18 limited to the items set forth Annex I"?

19 A I do not particularly recall discussion regarding  
20 that phrase.

21 Q Did you have any conversations with anyone at  
22 Victory Energy regarding the meaning of the term  
23 "Products"?

24 A No.

25 Q Okay. Were you present when any discussions

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1 were held with anyone at Victory Energy regarding the  
2 meaning of the term "Products"?

3 A No.

4 Q Did you have any conversations with Chairman Kim  
5 about the license agreement with Victory Energy?

6 A Yes.

7 Q To the best of your recollection, what did you  
8 say and what did he say relative to the license agreement?

9 A After the license agreement was entered into  
10 legally, I had told Mr. Kim and DKME board, as I  
11 typically report back to them once a month, that Erie  
12 Power had licensed a certain boiler line to Victory to  
13 sell and then that was the -- basically the scope of the  
14 discussion.

15 Q Did you have any discussions with Chairman Kim  
16 prior to the entry of the license agreement regarding the  
17 license?

18 A No.

19 Q What, if anything, did the members of the board  
20 of DKME say when you reported to them about the license  
21 agreement?

22 A DKME asked what the strategy behind the license  
23 agreement for Erie Power was, and I explained to them  
24 that it was a certain size of boilers that Erie Power  
25 felt like probably will not sell competitively, therefore

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1 we were going to license it so that we could get revenue  
2 from royalties.

3 Q Were you ever present, after the license  
4 agreement was signed, where there was a discussion about  
5 what products were covered by the license agreement with  
6 Victory Energy?

7 A Yes.

8 Q How many such conversations were you present for?

9 A I don't recall the exact number, but there were  
10 various discussions internally at Erie Power regarding  
11 this license agreement after -- after the fact.

12 Q Was there any reluctance on the part of the  
13 preexisting Erie Power employees with respect to the  
14 license agreement?

15 A Can you clarify like "preexisting", please.

16 Q Okay. Were any of the engineers at Erie Power  
17 opposed to Victory -- opposed to Erie Power entering into  
18 the license agreement with Victory Energy?

19 A Yes.

20 Q Okay. Which ones?

21 A I'm trying to think. There are a couple of  
22 vocal guys that did not like the license agreement.

23 There was a -- Jerry Naminiski I believe was the one  
24 engineer's name, and the other person is Bob Gdaniec.

25 Q Did Ted Fuhrman ever express any opposition to

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1 the license agreement to you?

2 A No, not to me personally. No.

3 Q Did Chris Petcos ever express any opposition to  
4 the license agreement?

5 A Yes. That's the -- the other person.

6 Q What did -- let's start with Jerry Naminiski.  
7 What did Mr. Naminiski say to you about the license  
8 agreement?

9 A He had indicated to me that -- that he felt like  
10 Victory was merely trying to get this license agreement  
11 so that they could steal Keystone line from Erie Power.

12 Q And what did you say?

13 A I said, "What are you basing that on?" and --  
14 and he indicated that certain members of Keystone  
15 Aftermarket group believed that Victory was asking for  
16 data or information that was outside the scope of the  
17 license agreement.

18 Q Were these people that were telling you what was  
19 outside the scope of the license agreement lawyers?

20 A No. No.

21 Q Did you ever provide for them an interpretation  
22 of the license agreement?

23 A No. I just say, well, let me then go talk to  
24 the rest of the people and find out why they're believing  
25 that there's some data being exchanged that are outside

8 (Pages 26 to 29)

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1 license agreement.

2 Q Do you know who assisted Victory Energy in  
3 designing and rating those boilers?

4 A Who from Erie Power? No. I mean -- no.

5 Q Do you know whether or not Erie Power assisted  
6 Victory Energy in designing and rating those boilers?

7 A No, I do not know.

8 Q Do you know whether or not anyone at Erie Power  
9 ever told Victory Energy "You can't sell the Oxy and  
10 Dallas/Fort Worth Airport projects," before those  
11 projects were built and closed?

12 A No, I do not know.

13 Q Do you know whether or not Erie Power received  
14 payment from Victory Energy for the Oxy and Dallas/Fort  
15 Worth projects?

16 A No, I do not know.

17 Q In fact, were you aware that Erie Power received  
18 additional remuneration from Victory Energy for an  
19 engineering study that was done for the Oxy project?

20 A No, I was not aware.

21 Q Were you aware that Victory Energy paid Erie  
22 Power an additional sum of money for studies done for the  
23 Dallas/Fort Worth Airport project?

24 A No, I was not aware.

25 Q As an attorney, did you go back and look at the

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1 license agreement to verify whether or not there was any  
2 violation of the license agreement consistent with what  
3 Mr. Gdaniec was saying here?

4 A I try not to do that as a president because I  
5 did not want to play the attorney role as the company  
6 officer. So -- so I really went to our engineers and --  
7 and I would really ask them what -- in the trenches, what  
8 was really happening when these boilers were being  
9 marketed or -- so I try to really review it from that  
10 point of view, rather than in looking at the license  
11 agreement.

12 Q Does Mr. Gdaniec have any legal training, to the  
13 best of your knowledge?

14 MR. GISLESON: Objection to the extent  
15 you're implying that it's necessary to have legal  
16 training to interpret this license agreement.

17 Q (BY MR. SHEEAN) Go ahead. You can answer, sir.

18 A No.

19 Q Did you ever have any counsel, other than what  
20 you've already told me about the MacDonald law firm, go  
21 back and look at the license agreement to verify whether  
22 or not Victory Energy had, in fact, stepped outside the  
23 boundaries as identified in the license agreement?

24 A No.

25 Q Mr. Gdaniec never says in this two-page document

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1 that Victory Energy is in breach of the agreement, does he?

2 MR. GISLESON: Objection. Mischaracterizing  
3 the document.

4 MR. SHEEAN: I'm asking what Mr. Kang's  
5 understanding of the document is.

6 Q (BY MR. SHEEAN) You can answer, sir.

7 A No, he did not have a conclusion on that issue.

8 Q Did you ever reach a conclusion as to whether or  
9 not Victory Energy was in breach of the agreement?

10 A No.

11 Q What is your understanding of the "M" series  
12 boiler?

13 A My understanding of the "M" series is more of  
14 a -- it was designed before the "O" series, so, therefore,  
15 the term "outdated" or "antiquated" were used by our  
16 people.

17 Q Do you have an understanding of why Victory  
18 Energy would want to license outdated and antiquated  
19 technology?

20 A I believe Victory wanted to sell those lines  
21 because they had a niche market that was different from  
22 Erie Power perhaps to certain industries that fit those  
23 certain types of boilers that we would not sell or have  
24 an access to in the market.

25 Q How did you develop that understanding?

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1 A Because they wouldn't have paid money for it and  
2 we figured that they had a -- sort of a different niche  
3 market perhaps that they wanted to sell those into versus  
4 us.

5 Q Did anyone from Victory Energy ever tell you  
6 that they were interested in licensing antiquated and  
7 outdated boilers?

8 A No.

9 Q To the best of your knowledge, did any of the  
10 boilers that Victory Energy designed, manufactured,  
11 marketed and sold under the license agreement fall within  
12 the boundaries of what your understanding of an "M"  
13 series boiler is?

14 A No. I mean, I don't know if they sold "M"  
15 series or "O" series. No, I do not.

16 Q When you met with Mark -- strike that. When you  
17 met with Victory Energy, along with Chairman Barber, in  
18 December of 2002, the stated goal was to increase revenue  
19 for Erie Power, correct?

20 A Yes.

21 Q And that's why you entered into the license  
22 agreement, correct?

23 A Yes.

24 Q And wasn't Erie Power interested in doing  
25 whatever it could to try and assist Victory Energy in

16 (Pages 58 to 61)

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1 conversations. Can you recall any specific conversation  
2 with Mr. Petcos, other than the two you've already  
3 identified, relative to his belief that the license  
4 agreement should be terminated?

5 A No.

6 Q When was the -- strike that. How many  
7 conversations did you have with Ted Fuhrman wherein he  
8 indicated he believed the license agreement between Erie  
9 Power and Victory Energy should be terminated?

10 A A couple of times. And in Ted's case, it wasn't  
11 a termination discussion. It was more of a -- Ted's  
12 concern that the technology or information being given  
13 were outside of the scope of the license agreement was  
14 more of his concern.

15 Q Did you ever authorize anyone at Erie Power to  
16 inform Victory Energy that it was not authorized to sell  
17 boilers -- any specific boiler under the license  
18 agreement?

19 A No.

20 Q I asked you before about negotiations between  
21 Erie Power and Victory Energy relative to the license  
22 agreement.

23 A Yes.

24 Q Do you recall that?

25 A Yes.

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1 Q And I believe you indicated that Mark White  
2 negotiated the license agreement on behalf of Erie Power,  
3 correct?

4 A Yes, that's correct.

5 Q Do you know whether or not any other Erie Power  
6 representative was involved in communications with  
7 Victory Energy regarding the license agreement before it  
8 was executed?

9 A Dan Levstek.

10 Q How do you know that Dan Levstek was involved?

11 A Because, at the time, I was still sort of  
12 learning the company and Dan Levstek was practically  
13 running day-to-day operation in many areas in his  
14 involvement with the company, so I had asked him if he  
15 could work with Mark White to oversee this license  
16 agreement negotiation. So I'm -- I don't have personal  
17 knowledge that he was on the phone or actually  
18 communicated with Victory, but I'm sure he -- he -- he  
19 did when he worked on this with Mark White.

20 Q You're sure he did but you have no personal  
21 knowledge?

22 A Right, right.

23 Q Anyone else that you're aware of that communicated  
24 with Victory?

25 A No.

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1 MR. SHEEAN: Those are all the questions I  
2 have at this time.

### 3 EXAMINATION

4 Q (BY MR. GISLESON, 3:42 p.m.) Good afternoon.

5 A Hi.

6 Q So your undergraduate and major from Carnegie  
7 Mellon, you got a bachelor of science in?

8 A Economics, industrial management.

9 Q Oh, in industrial management?

10 A Yes.

11 Q Do you have any education or training in  
12 engineering?

13 A No.

14 Q Throughout the time that you were, first, chief  
15 financial officer and then president of Erie Power  
16 Technologies, were you relying on the engineers with  
17 respect to their knowledge and experience with the  
18 technology underlying the license agreement with Victory  
19 Energy Operations?

20 A Yes.

21 Q I want to ask you some questions about your  
22 discussions with Mark White prior to the time that the  
23 license agreement between Erie Power and VEO was executed.  
24 How did Mark White describe to you the technology that  
25 was to be licensed to VEO?

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1 A He said it was 150 pounds per hour pressure  
2 or -- or less size or these were outdated, antiquated  
3 models to Erie Power.

4 MR. SHEEAN: I'm going object to the extent  
5 it mischaracterizes prior testimony.

6 Q (BY MR. GISLESON) When you're referring to 50  
7 (SIC) pounds, is it -- do you mean 150,000 pounds per hour?

8 A Yes. I'm sorry. 150 -- 150,000, yes, yes.

9 Q And Mark White told you that the technology was  
10 outdated and antiquated?

11 A Yes.

12 Q And that's what Mark White told you prior to the  
13 time the license agreement was executed, correct?

14 A Yes.

15 Q Did you rely on his description as to the  
16 technology in authorizing him to proceed with the  
17 negotiations and execution of a license agreement?

18 MR. SHEEAN: Objection. Vague.

19 A I relied on him and others, other engineers, to  
20 look into the technical scope definition for the license  
21 agreement.

22 Q (BY MR. GISLESON) Now, in terms of the  
23 technical scope definition for the license agreement, you  
24 said that you wanted to have Mark check with the  
25 engineers about what those specifications were; is that

21 (Pages 78 to 81)